

**STATE OF MICHIGAN**  
**DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS**  
**OFFICE OF FINANCIAL AND INSURANCE REGULATION**  
**Before the Commissioner of Financial and Insurance Regulation**

**In the matter of**

**XXXX**

**Petitioner**

**v**

**File No. 120475-001**

**Priority Health Insurance Company**  
**Respondent**

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**Issued and entered**  
**this 20<sup>th</sup> day of September 2011**  
**by R. Kevin Clinton**  
**Commissioner**

**ORDER**

**I. PROCEDURAL BACKGROUND**

On April 6, 2011, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.*

The Petitioner receives health care benefits under an insurance policy issued by Priority Health Insurance Company. The Commissioner notified Priority Health of the external review and requested the information used in making its adverse determination. The Commissioner received Priority Health's response on April 8, 2011. The Commissioner accepted the request for review on April 14, 2011.

The issue in this case can be decided by applying the terms of Priority Health's preferred provider organization insurance policy. The Commissioner reviews contractual issues pursuant to MCL 550.1911(7). This matter does not require a medical opinion from an independent review organization.

**II. FACTUAL BACKGROUND**

Petitioner seeks coverage for a pregnancy termination and related medical treatment performed on April 13 and 14, 2010. Petitioner elected to terminate her pregnancy after an amniocentesis revealed the likelihood that her child would be born with Down syndrome. Priority Health denied coverage of the procedure because the policy does not provide coverage

for an elective pregnancy termination. A policy rider providing coverage for pregnancy termination is offered by Priority Health but the Petitioner's benefit plan does not include that rider.

Petitioner appealed Priority Health's denial of the claims through Priority Health's internal grievance process. Priority Health issued its final adverse determination on March 4, 2011, upholding its denial of coverage.

### **III. ISSUE**

Did Priority Health correctly deny coverage of Petitioner's pregnancy termination and related medical services provided on April 13 and 14, 2011?

### **IV. ANALYSIS**

#### **Petitioner's Argument**

Petitioner argues that Priority Health should cover the procedure stating, in part:

I am seeking coverage for a D&E that was performed on April 13 and 14, 2010 at XXXXX. The pregnancy and baby were very much wanted, but an amniocentesis in April 2010 indicated Trisomy 21.

A multidisciplinary conference was scheduled immediately. At that conference, my husband and I were advised of the consequences of Trisomy 21. XXXXX recommended termination by dilation and extraction due to two prior cesarean sections. . . .

XXXXX agreed with XXXXX's recommendation and performed the dilation and extraction due to fetal anomaly. . . .

My Ob/Gyn . . . also concurred with the recommendation of medical interruption of my pregnancy due to the results of Trisomy 21 on the amniocentesis. . . .

At the time I underwent my surgery on April 13 and April 14, 2010, there was nothing in our Priority Health materials indicating that it would not be covered. The Schedule of Benefits, Section A, p. 3 indicated "You are entitled to covered services when these services are medically/clinically necessary . . . with the input of physicians not employed by Priority Health or according to criteria developed by reputable external sources."

Secondly, under Covered Benefits, p. 6, "Maternity services are a covered expense, with 60% of coverage of reasonable and customary charges."

\* \* \*

Also of significance is the fact that Priority Health was confused by coverage. A task note dated April 7, 2010 . . . indicated "after looking at the medical policy for

this member I realized that I quoted the benefit incorrectly to the provider. We will review the medical information sent by the physician to see if this would be covered for the member.” This confusion remained and on April 9, 2010 the Priority Health task note indicates “we will review the medical information sent by the physician to see if this would be covered for the member . . .”

\* \* \*

Based on all the aforementioned medical documentation and recommendations, I would respectfully request that the . . . surgical bill for 4-13-10 and 4-14-10 be covered by Priority Health.

### Respondent’s Argument

In its final adverse determination dated March 4, 2011, Priority Health affirmed its denial of coverage:

[R]equested coverage will not be provided as the services are not a covered benefit as outlined in the Insurance Policy and Medical Policy for Termination of Pregnancy – Elective.

Medical records do not evidence either a fetal condition incompatible with life post-delivery or a life-threatening condition requiring that [the Petitioner] terminate the pregnancy immediately.

\* \* \*

Priority Health Insurance Company processed the claims to deny as not a covered benefit as outlined in the Insurance Policy which states:

IV. Covered And Non-Covered Services

G. Family Planning And Maternity Care Services

Abortions

*Non-Covered services*

All services and supplies relating to elective abortions.

Priority Health also cited its Medical Policy No. 91000-R6 *Termination of Pregnancy – Elective* which includes these provisions:

## II. POLICY/CRITERIA

Elective termination of pregnancy is not a covered benefit unless the group/member has purchased the rider for that coverage.

- A. The exclusion shall not apply to terminations of pregnancy performed when the mother’s life is endangered by continuation of the pregnancy or when the pregnancy is the result of rape or incest . . .

\* \* \*

- C. Elective pregnancy termination may be covered when at least two independent physicians concur that a fetal condition diagnosed in-utero is incompatible with life post-delivery.

Priority Health argues that none of the exceptions in the medical policy apply to the Petitioner's situation.

#### Commissioner's Review

The Petitioner's policy includes a blanket prohibition of coverage for pregnancy termination. This prohibition is waived in some circumstances which are described in Priority Health's *Termination of Pregnancy – Elective* medical policy. None of those limited circumstances are present in the Petitioner's case. It was not claimed that the Petitioner's life would be endangered by the pregnancy, nor was there any claim that the pregnancy was caused by rape or incest.

The Petitioner's argument was based on the medical condition of the fetus. Petitioner's physicians confirmed the results of Petitioner's amniocentesis indicated the fetus had Down syndrome. However, that condition was not claimed to be one which was incompatible with life post-delivery.

The Commissioner finds Priority Health's denial of coverage was consistent with the terms of the Petitioner's policy and the Priority Health medical policy regarding elective termination of pregnancy.

#### **V. ORDER**

The Commissioner upholds Priority Health's final adverse determination issued March 4, 2011. Priority Health is not required to provide benefits for Petitioner's pregnancy termination.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than 60 days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.

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R. Kevin Clinton  
Commissioner